

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF:

North Hollywood Operable Unit,  
San Fernando Valley Superfund Site, Area 1  
Los Angeles, California

Pick-Your-Part Auto Wrecking, Hayward  
Associates, LLC, and PNM Properties, LLC

SETTLING PARTY

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) SETTLEMENT AGREEMENT FOR  
) RECOVERY OF RESPONSE COSTS  
) AND PAYMENT OF CIVIL  
) PENALTY

) U.S. EPA Region IX  
) CERCLA Docket No. 9-2011-0019

) PROCEEDING UNDER SECTION  
) 122(h)(1) and 106(b)(1) OF CERCLA  
) 42 U.S.C. § 9622(h)(1) and  
) §9606(b)(1)  
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## TABLE OF CONTENTS

|        |   |    |
|--------|---|----|
| I.     | JURISDICTION and GENERAL PROVISIONS .....         | 3  |
| II.    | BACKGROUND .....                                  | 3  |
| III.   | PARTIES BOUND .....                               | 6  |
| IV.    | DEFINITIONS.....                                  | 6  |
| V.     | PAYMENT OF RESPONSE COSTS.....                    | 8  |
| VI.    | CIVIL PENALTY .....                               | 9  |
| VII.   | PAYMENT OF CIVIL PENALTY .....                    | 9  |
| VIII.  | FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT ..... | 10 |
| IX.    | COVENANT NOT TO SUE BY EPA .....                  | 12 |
| X.     | RESERVATIONS OF RIGHTS BY EPA.....                | 12 |
| XI.    | COVENANT NOT TO SUE BY SETTLING PARTY.....        | 13 |
| XII.   | EFFECT OF SETTLEMENT/CONTRIBUTION .....           | 13 |
| XIII.  | ACCESS TO INFORMATION .....                       | 15 |
| XIV.   | RETENTION OF RECORDS .....                        | 16 |
| XV.    | NOTICES AND SUBMISSIONS .....                     | 16 |
| XVI.   | INTEGRATION/APPENDICES .....                      | 17 |
| XVII.  | PUBLIC COMMENT .....                              | 17 |
| XVIII. | EFFECTIVE DATE .....                              | 18 |

## **I. JURISDICTION and GENERAL PROVISIONS**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), and pursuant to the inherent authority of the Attorney General of the United States to compromise civil actions under CERCLA, including CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1). EPA's authority under CERCLA Section 122(h), 42 U.S.C. § 9622(h), has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Chief of Region IX's Superfund Site Cleanup Branch (now titled Assistant Director) by regional delegation R9 1290.20.
2. This Settlement Agreement is made and entered into by EPA and the Settling Party (as defined herein). The Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.
3. This Settlement Agreement will not become effective without the approval of the United States Attorney General or his designee.

## **II. BACKGROUND**

4. This Settlement Agreement concerns the North Hollywood Operable Unit ("NHO") of the San Fernando Valley Area 1 Superfund Site ("Site"), which is located in the vicinity of Los Angeles, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
5. The San Fernando Valley Basin (the "Basin") is an important source of drinking water for the Los Angeles metropolitan area. The Los Angeles Department of Water and Power ("LADWP") produces groundwater for public distribution from seven well fields near or within the NHO. Over the past ten years, groundwater from LADWP well fields located in the Basin, including in the NHO, has contributed approximately fifteen percent of the City of Los Angeles' municipal water supply.
6. Tests conducted in the early 1980s to determine the presence of certain industrial chemicals in the State's drinking water revealed extensive contamination from volatile organic compounds ("VOCs") in the Basin's groundwater. In 1985, groundwater from twenty-seven of the thirty-eight production wells in the NHO well field exceeded the federal Maximum Contaminant Level ("MCL") for trichloroethylene ("TCE"), and four wells exceeded the MCL for tetrachloroethylene ("PCE").

7. Chromium contamination was detected in the Basin for the first time in 1987, but the extent of chromium contamination was not immediately understood. EPA began a chromium monitoring program in the early 1990s, and in 1999 EPA began quarterly monitoring for hexavalent chromium (also referred to as chromium VI), the predominant form of chromium in the Basin's groundwater.
8. EPA has determined that groundwater sampling at or in the vicinity of the former Gregg Pit/Benz Dump, located at 9361 Glenoaks Blvd., Sun Valley California (the "Facility") demonstrates that there have been PCE and/or TCE releases at the Facility. The Settling Party disputes this, and instead contends that there is no such evidence of any such releases from the Facility. EPA also has determined that these releases have impacted or threaten to impact groundwater in the vicinity of the NHOU well field. The Settling Party also disputes this, and instead contends that there has been no impact to the NHOU for any alleged release(s) – assuming one or more occurred – from the Facility.
9. The Facility is currently owned and operated by certain entities that are included in the definition of Settling Party. EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and further alleges that the Settling Party is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.
10. In response to the release(s) or threatened release(s) of hazardous substances at or from the Site, EPA has undertaken response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
11. In September of 1987, EPA signed a Record of Decision ("ROD") for the remediation of VOC-contaminated groundwater in the NHOU. The 1987 ROD called for fifteen years of extraction and treatment of VOC-contaminated groundwater in order to contain the VOC plume and remove contaminant mass. The groundwater extraction and treatment remedy selected in the 1987 ROD began operating in December 1989 and continues to operate today (the "Existing Remedy").
12. The Existing Remedy was constructed to operate in conjunction with LADWP's North Hollywood municipal water treatment and distribution plant. Since its startup, LADWP has operated and maintained the Existing Remedy under a cooperative agreement with EPA, whereby EPA reimburses LADWP for the costs of operating the Existing Remedy.
13. In performing the response action, EPA has incurred and will incur response costs at or in connection with the Site.

14. In 1996 and 1997, thirty-seven parties, including the Settling Party, entered into consent decrees with the United States (the "Consent Decrees"),<sup>1</sup> in which they agreed to (1) reimburse the United States for all NHOU past costs and a proportional share of past Basin-wide costs, and (2) pay future costs to operate and maintain the Existing Remedy for the remainder of its fifteen-year term, i.e., through approximately 2004. The settlement proceeds from the Consent Decrees were deposited in a special account for the NHOU. EPA's covenant not to sue in the Consent Decrees is limited to the costs necessary to implement the Existing Remedy during the fifteen-year period contemplated in the ROD.
15. The Settling Party maintains that all of its obligations to fund operations of the Existing Remedy were satisfied by payments made pursuant to the Consent Decrees, a position with which EPA disagrees.
16. On September 30, 2009, EPA signed the Second Interim ROD, selecting a new interim remedy for the NHOU ("Second Interim Remedy"). The Second Interim Remedy is meant to address VOC contamination (in areas of the NHOU addressed by the Existing Remedy as well as in new areas of the NHOU) and contaminants not addressed by the Existing Remedy, e.g., hexavalent chromium. EPA anticipates that the Second Interim Remedy will be constructed and operational approximately three years after execution of a consent decree to implement the Second Interim Remedy.
17. The money in the NHOU special account collected pursuant to the Consent Decrees was exhausted in the fall of 2008. In anticipation that the special account would soon be exhausted, EPA approached eleven of the thirty-seven Consent Decree signatories in April 2008 to request funding to continue operation and maintenance of the Existing Remedy until the Second Interim Remedy is constructed and operating (the "Interim Period").<sup>2</sup>
18. Of the eleven parties EPA approached for Interim Period funding, four parties (the "AOC Parties") agreed to enter into an administrative order on consent with EPA, EPA Region IX CERCLA Docket No. 9-2008-0024 (the "AOC").<sup>3</sup> The AOC Parties agreed to pay EPA \$1,300,920 to operate and maintain the Existing Remedy during the Interim Period. Seven of the eleven parties EPA approached for Interim Period funding, including the Settling Party, refused to voluntarily enter into the AOC.<sup>4</sup>

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<sup>1</sup> The United States entered into the First Partial Consent Decree in *United States v. Allied Signal et al*, Docket No. 93-6490-MRP, with nine parties in 1996. Twenty eight additional parties signed the Second Partial Consent Decree in *United States v. Allied Signal et al*, Docket No. 93-6490-MRP, in 1997.

<sup>2</sup> The remaining twenty-six Consent Decree signatories are either no longer viable parties or were third-party defendants in the Consent Decrees on which EPA had not, as of April 2008, completed its liability investigation.

<sup>3</sup> The AOC parties include Honeywell International, Inc.; Lockheed Martin Corporation; Calmat Co. dba Vulcan Materials Company, Western Division; and California Car Hikers Services, Inc.

<sup>4</sup> The seven noncomplying parties were: the Settling Party; Los Angeles By Products Company; Waste Management Recycling & Disposal Services of California, Inc., dba Bradley Landfill & Recycling Center; Hawker Pacific Aerospace; the Wagner Living Trust; the Basinger B Trust; and the Basinger C Trust.

19. On September 18, 2008, EPA issued a unilateral administrative order, pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), to the seven parties that refused to enter into the AOC, EPA Region IX CERCLA Docket No. 9-2008-0025 (the "UAO"). The UAO directs the recipients to submit a work plan to EPA in which they either commit to participating and cooperating with the AOC Parties in funding the continued operation of the Existing Remedy or commit to containing and preventing the migration of the NHOU groundwater plume. EPA determined that four of the UAO recipients that submitted work plans pursuant to the UAO had complied with the terms of the order. Those parties contributed a total of \$112,000 towards the continued operation of the Existing Remedy. Three UAO recipients, including the Settling Party, failed to submit work plans acceptable to EPA within the compliance time frame.<sup>5</sup>
20. EPA and the Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

21. This Settlement Agreement shall be binding upon EPA and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

22. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:
- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
  - b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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<sup>5</sup> The Settling Party's compliance date under the UAO was October 21, 2008.  
Administrative Order on Consent  
U.S. EPA CERCLA Docket No.  
9-2011-0019

- c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.
- e. "Existing Remedy" shall mean the groundwater extraction and treatment remedy selected in the 1987 NHOU ROD. The remedy selected in the 1987 NHOU ROD was designed to contain and treat groundwater contaminated with volatile organic compounds in the vicinity of the North Hollywood well field. The Existing Remedy began operating in December 1989.
- f. "Facility" shall mean the former Gregg Pit/Benz Dump, located at 9361 Glenoaks Boulevard, Sun Valley California.
- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.<sup>6</sup>
- h. "Interim Period" shall mean the period of time between exhaustion of the funds in the NHOU Special Account that were collected pursuant to the 1996 and 1997 Consent Decrees and start up of the Second Interim Remedy. The Interim Period began in October 2008 and EPA estimates that it will end approximately three years after a new consent decree is signed for implementation of the Second Interim Remedy.
- i. "NHOU" shall mean the North Hollywood Operable Unit of the San Fernando Valley Area 1 Superfund Site in Los Angeles, California, which is defined by the areal extent of groundwater contamination that is presently located in the vicinity of the North Hollywood well field and includes any areas to which and from which such hazardous substance groundwater contamination migrates.
- j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- k. "Parties" shall mean EPA and the Settling Party.

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<sup>6</sup> The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at [http://www.epa.gov/budget/finstatement/superfund/int\\_rate.htm](http://www.epa.gov/budget/finstatement/superfund/int_rate.htm).



- l. "Response Costs" shall mean costs to be incurred by EPA to operate and maintain the Existing Remedy during any portion of the Interim Period. EPA estimates that Response Costs will be approximately \$500,000 per year. Response Costs shall not include EPA's oversight costs.
- m. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- n. "Settlement Agreement" shall mean this Settlement Agreement for Recovery of Response Costs, EPA Region IX CERCLA Docket Number 9-2011-0019. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.
- o. "Settlement Period" shall mean the portion of the Interim Period during which operation and maintenance of the Existing Remedy is funded with Response Costs paid pursuant to Section V of this Settlement Agreement and the AOC. The Settlement Period shall begin when the funds in the NHOU Special Account collected pursuant to the 1996 and 1997 Consent Decrees are exhausted. The Settlement Period shall end when the Response Costs collected pursuant to Section V of this Settlement Agreement and the AOC have been exhausted.
- p. "Settling Party" shall mean Pick-Your-Part Auto Wrecking, Hayward Associates, LLC, PNM Properties, LLC, and their respective officers, directors, and employees.
- q. "Site" shall mean the San Fernando Valley Area 1 Superfund Site in Los Angeles, California.
- r. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

#### **V. PAYMENT OF RESPONSE COSTS**

- 23. Within ten (10) days of the effective date of this Settlement Agreement, the Settling Party shall pay Response Costs to EPA in the amount of ONE HUNDRED AND TWO THOUSAND, ONE HUNDRED AND SIXTY-ONE dollars (\$102,161).<sup>7</sup>
- 24. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Settling Party by EPA Region IX, and shall be accompanied by a statement identifying the name and address of the Settling Party, the

<sup>7</sup> Of the \$102,161 to be paid in Response Costs, \$18,500 represents the Settling Party's economic benefit (which includes interest) from its delayed compliance with the UAO.



Site name, the EPA Region and Site/Spill ID Number 09N1, and the EPA docket number for this action.

25. At the time of payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number (09N1), and the EPA Docket Number for this action.
26. The Response Costs to be paid pursuant to Section V shall be deposited in the North Hollywood Operable Unit Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substances Superfund.

#### VI. CIVIL PENALTY

27. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each day a violation of CERCLA Section 106 occurs between March 15, 2004, and January 12, 2009, and THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day a violation of CERCLA Section 106 occurs after January 12, 2009. *See* Table 1 of 40 CFR § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004), 73 Fed. Reg. 75345 (Dec. 11, 2008).
28. Based on the facts alleged herein and upon all the factors that EPA considers pursuant to CERCLA and the *Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders*, EPA proposes that the Settling Party be assessed a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000) for its failure to timely comply with the UAO.

#### VII. PAYMENT OF CIVIL PENALTY

29. The Settling Party hereby consents to the assessment of and agrees to pay THIRTY THOUSAND DOLLARS (\$30,000) as a civil penalty for its failure to timely comply with the UAO. This Settlement Agreement constitutes a full settlement of all claims for the violations of CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1), alleged herein.
30. The Settling Party shall pay the civil penalty within thirty (30) days of the effective date of this Settlement Agreement, by sending a certified or cashier's check in the amount of

THIRTY THOUSAND DOLLARS (\$30,000), payable to "Treasurer, United States of America," to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

The check shall reference the name and docket number of the Settlement Agreement, and shall be accompanied by a cover letter stating that payment is being made pursuant to this Settlement Agreement. The cover letter and civil penalty shall be sent by certified mail, return receipt requested. Copies of the transmittals shall be sent to:

Kelly Manheimer  
Superfund Division (SFD-7-1)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

31. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the effective date of this Settlement Agreement to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the effective date of this Settlement Agreement at the current rate published by the United States Treasury as described at 40 C.F.R. §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. The Settling Party further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
32. The civil penalties specified in this Settlement Agreement shall represent civil penalties assessed by EPA and shall not be deducted by the Settling Party or any other person or entity for federal, state, or local taxation purposes.

#### **VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

33. Interest on Late Payments. If the Settling Party fails to make any payment required by Section V or Section VII by the required due date, Interest shall begin to accrue on the unpaid balance on the due date and shall continue to accrue through the date of payment.

34. Stipulated Penalty.

- a. If any amount due to EPA under Section V or Section VII is not paid by the required date, the Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 33, \$2,000 per violation per day that such payment is late.
- b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number (09N1), and the EPA Docket Number for this action. Settling Parties shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, Missouri 63197-9000

- c. At the time of each payment, the Settling Party shall send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number (09N1), and the EPA Docket Number for this action.
- d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

35. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Settlement Agreement, the Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), in the event that it fails or refuses to comply with the requirements of this Settlement Agreement. If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

36. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse the Settling Party from payment as required by Section V or Section VII or from performance of any other requirements of this Settlement Agreement.

#### **IX. COVENANT NOT TO SUE BY EPA**

37. Covenant Not to Sue by EPA. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs for the Settlement Period. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs), Section VII (Payment of Civil Penalty), and any amounts due under Section VIII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

#### **X. RESERVATIONS OF RIGHTS BY EPA**

38. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 37. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Setting Parties with respect to:
- a. liability for failure of the Settling Party to meet a requirement of this Settlement Agreement;
  - b. liability for any costs incurred or to be incurred by the United States that are not Response Costs for the Settlement Period;
  - c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606 (except as addressed in this Settlement Agreement);
  - d. criminal liability; and
  - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
39. The Settling Party recognizes and acknowledges that the settlement embodied in this Settlement Agreement relates only to operation and maintenance of the Existing Remedy during the Settlement Period and that in order to ensure continued operation of the Existing

Remedy for the entire Interim Period, EPA may incur oversight costs and Response Costs in addition to those incurred during the Settlement Period. The Settling Party also recognizes and acknowledges that EPA intends to replace the Existing Remedy with a new remedy for the NHOU at the end of the Interim Period.

40. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **XI. COVENANT NOT TO SUE BY SETTTLING PARTY**

41. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs for the Settlement Period, the civil penalties assessed under Section VII, or this Settlement Agreement, including but not limited to:
- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
  - b. any claims arising out of the response actions at the Site for which the Response Costs are incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
  - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.
42. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### **XII. EFFECT OF SETTLEMENT/CONTRIBUTION**

43. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA 9613(f)(2)-(3), to pursue any

such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

44. EPA and the Settling Party agree that the actions undertaken by the Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.
45. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Response Costs for the Settlement Period. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Settling Party has, as of the Effective Date, resolved its liability to the United States for Response Costs for the Settlement Period.
46. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.
47. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section IX.



### **XIII. ACCESS TO INFORMATION**

48. The Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.
49. Confidential Business Information and Privileged Documents.
- a. The Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Parties.
  - b. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Settling Party shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.
50. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.



#### **XIV. RETENTION OF RECORDS**

51. Until ten (10) years after the effective date of this Settlement Agreement, the Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.
52. After the conclusion of the 10-year document retention period in the preceding Paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, the Settling Party shall deliver any such records to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.
53. The Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State of California or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XV. NOTICES AND SUBMISSIONS**

54. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent to EPA, it shall be directed to the individuals at the addresses specified below. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and the Settling Party.

As to EPA:

Michael Massey  
U.S. EPA  
Office of Regional Counsel, ORC-3  
75 Hawthorne Street  
San Francisco, California 94105

Kelly Manheimer  
U.S. EPA  
Superfund Division, SFD-7-1  
75 Hawthorne Street  
San Francisco, California 94105

**XVI. INTEGRATION/APPENDICES**

55. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

**XVII. PUBLIC COMMENT**

56. This Settlement Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

**XVIII. EFFECTIVE DATE**

57. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 56 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Kathleen Salyer  
Assistant Director, Superfund Division  
California Site Cleanup Branch  
U.S. EPA, Region IX

12/6/11  
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of U.S. EPA docket No. 09-2011-0019, relating to the North Hollywood Operable Unit of the San Fernando Valley Superfund Site, Area 1:

FOR SETTLING PARTY: **Pick-Your-Part Auto Wrecking**

By: Cindi R. Galfin 11/15/11  
Signature Date

Cindi R. Galfin Vice President  
Print Name & Title

**Hayward Associates, LLC**

By: Glenn C. McElroy 11/16/11  
Signature Date

Glenn C. McElroy, Managing Partner  
Print Name & Title

**PNM Properties, LLC**

By: Glenn C. McElroy 11/16/11  
Signature Date

Glenn C. McElroy, Managing Partner  
Print Name & Title

